IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 414 of 1978

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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GOHIL RANJITSINGH MADARSINGH - Appellant(s)
Versus
KANBI HARIBHAI MAGANBHAI - Defendant(s)

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Appearance :
MR CH VORA for Appellant(s) : 1,
MR DD VYAS for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 15/03/2007

ORAL JUDGMENT

1. Mr.C.H. Vora, learned counsel for the appellant with appellant - Mr.Ranjitsinhji Madarsinhji Gohil.
2. Mr.D.D. Vyas, learned counsel for the respondent with

Shankarbhai Haribhai Kanbi (son of the the respondent), submit that the son of the respondent namely Shankarbhai is present in the court to instruct him. He submits that Shankarbhai son of Haribhai also holds power of attorney from the respondent.

3. The parties have filed compromise deed dtd.14/3/2007. Mr.C.H. Vora, learned counsel for the appellant submits that it bears the signature of Gohil Ranjitsinhji Madarsinhji – appellant and to confirm the signature, he has affixed his counter signature.
4. Mr.D.D. Vyas, learned counsel for the respondent submits that the compromise has been signed by Kanbi Haribhai Maganbhai, through his son who holds power of attorney, namely Shankarbhai Haribhai Patel.
5. Learned counsel for the parties submit that the terms of the compromise have been read over and explained in Gujarati to the parties and the parties have understood the same and in acceptance of the terms of the compromise, they have affixed their signature. The parties present in the court admit that the matter has been compromised between them.
6. I have gone through the terms of the compromise, the compromise does not appear to be illegal, or contrary to

law, nor against the public policy. The compromise is valid and appears to be arrived at to finally dispose of the dispute between the parties. The terms of the compromise proposed in para 3(a) to 3(d) of the compromise deed are accepted. The terms 3(a) to 3(d) are as under:-

"3(a). The parties hereby agree that present appellant (ori.Defendant) – Gohil Ranjitsinhji Madarsinhji shall pay a sum of Rs.5,00,000-00 (in words rupees five lacs only) by way of cheque on or before 21/5/2007 to the present respondent (original plaintiff) Kanbi Haribhai Maganbhai.

(b) In view of the settlement indicated in clause (a) hereinabove, the original plaintiff waives all his rights with respect to suit land which is subject matter of present appeal and the aforesaid suit stands withdrawn. In view of the aforesaid settlement, the present respondent (orig.plaintiff) Kanbi Haribhai Maganbhai agrees that decree for specific performance passed by the Hon'ble Lower Appellate Court in pursuance of Judgment and Decree passed in Civil Regular Appeal No.57/1997 dated 31.7.1978 be modified in terms of the settlement.

(c)The parties further agree that if present appellant (Orig. Defendant) – Gohil Ranjitsinhji Madarsinhji fails to make a

payment within stipulated time i.e. on or before 21/5/2007 as mentioned hereinabove and if the cheque tendered by him is dishonoured on account of insufficiency of fund or any other reason whatsoever, present appeal shall stand dismissed automatically and present respondent (Orig. Plaintiff) – Kanbi Haribhai Maganbhai will be entitled to decree for specific performance and the appellant (Orig.deft.) shall hand over the peaceful and vacant possession to the respondent (Orig.plaintiff) and also shall execute the sale deed in favour of the appellant in terms of the decree passed by the appellate court in R.C.S. No.57/1977.

(d)The parties further agree that present appellant (Orig.Defendant) – Gohil Ranjitsinhji Madarsinhji has not and shall not transfer or alienate in amy manner whatsoever or create any encumbrances upon the land in question till present Respondent – (Orig.Plaintiff) Kanbi Haribhai Maganbhai receives payment of Rs.5,00,000=00 as mentioned hereinabove."

7. Deed of compromise shall be integral part of the decree. The appeal is disposed of in terms of aforesaid compromise. Let a decree be framed accordingly. No costs.

(R.S. GARG, J.)

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